be sustained on the ground that it was based upon the volume of business furnished by a particular class of persons. *McCabe, et al.* v. *Atchison, etc. Ry. Co., et al.* (1914), 35 Sup. Ct. 69.

This case follows the leading case of *Plessy* v. *Ferguson,* 163 U. S. 537, in holding that the "equality right" secured to all citizens by the "equal protection of the law" clause of the Fourteenth Amendment, is not a joint or common enjoyment of the right, but that if a statute providing for separation of passengers requires a railway company to furnish equal accommodations, without discrimination, to all travelling under like conditions, then it does not contravene this section of the Constitution. The following cases also sustain this view: *Anderson* v. *Louisville, etc. R. Co.,* 62 Fed. 46; *Ohio Valley R. Co.* v. *Lander,* 104 Ky. 431; *Morrison* v. *State,* 116 Tenn. 534; *C. & N. W. R. Co.* v. *Williams,* 55 Ill. 185. Independent of any statutory authority, a carrier may adopt rules and regulations requiring colored persons, solely because of their color, to occupy apartments or coaches set apart for those of their race, on the ground that the duty of the carrier extends to equality, not identity or community of accommodation. *Chilton* v. *St. Louis, etc. R. Co.,* 114 Mo. 88; *Westchester, etc. R. Co.* v. *Mills,* 55 Pa. 209; *Chesapeake, etc. R. Co.* v. *Chiles,* 125 Ky. 299. In all cases the right of the carrier to separate the two classes of passengers has the condition attached that the accommodations furnished shall be equal in every respect. Therefore, aside from statutory regulation, if the rules of the carrier subject colored passengers to unjust discriminations, such regulations have been declared by the courts to be unreasonable and void. *Coger* v. *N. W. Union Packet Co.,* 37 Iowa 145; *The Sue,* 22 Fed. 843. Upon examination of the cases sustaining the right of the legislature to pass "separation acts," it will be seen that the majority of them hold that there is a proviso attached to the effect that such statute must insure to all concerned, equal treatment in every respect, and that any law authorizing railroad companies to violate their common law duty to the public would be unconstitutional and void. The principal case affirmatively establishes that proposition.

CONTRACTS — CONSTRUCTION. — Defendant had purchased a cemetery lot from plaintiff lodge, the ownership of which was evidenced by a certificate signed by both parties, whereby defendant obtained the lot for burial purposes for a certain price and agreed to conform to all of the rules and regulations of the association, and also to any amendments thereto. At the time of the purchase one of the rules was that all lots should be taken care of by a servant of the plaintiff lodge at a price of $1.50 per year. Several years later this rule was changed so that the price was increased to $2.00 per year. Defendant refused to pay the increase, and was sued. *Held,* (FARRINGTON, J. dissenting) that there was no express contract to pay, and that there could be no implied contract found. *Monett Lodge No. 106, I. O. O. F.* v. *Hartman* (Mo. App. 1914), 170 S. W., 670.

Neither the prevailing nor dissenting opinion seems to regard the by-law in force at the time of the contract as itself a term in the contract which cannot be changed without assent. The majority of the court, while holding

that the defendant assented to the other regulations and rules, say that in regard to the money payment in excess of $1.50 per year, to this he could not be held to have agreed. If the by-laws and rules are to be regarded as part of the contract for any purpose the dissenting opinion would appear to be the most consistent and logical. If the by-laws and regulations were not a part of the contract there was no promise to keep the cost at the price fixed at the time of the contract. *Stewart etc. Co.* v. *Krambs,* 139 Cal. 318. And by assenting to having the work done he ought to be regarded as impliedly bound to pay. Where the question of how far a party is bound by agreeing to changes in rules and regulations, has come up in insurance cases, the rule seems to be that he is not bound by any rule or regulation which materially lessens the value of the policy, or in other words the subject matter of the contract. *Knights Templar and Masons Life Indemnity Co.* v. *Jarman,* 104 Fed. 638; *Loyd* v. *Supreme Lodge,* 98 Fed. 66. But this rule only holds good where the real subject matter of the contract is at stake which was not the case here. If, as the majority seem to hold, the other rules and regulations are binding, then the dissenting opinion would appear to be sounder in holding that the defendant was bound to pay the increased rate.

CONTRACTS—ENFORCEMENT OF CONTRACT BY THIRD PARTY.—Defendant had contracted with the local Maltsters Union to employ only members of the Union in his brewery, and agreed to pay them $18 per week. Plaintiff, a member of the Union, entered the employ of defendant, and evidently knowing nothing of the existence of the above contract agreed to work for $9 per week and did so for about two years. Discovering the existence of the contract between defendant and the Union he now sued defendant for the difference between $9 and $18 per week for the time that he had been working. *Held,* that it was a contract entered into for the benefit of a third party on which he could sue and recover. *Gulla* v. *Barton* (1914), 149 N .Y. Supp. 952.

The two principles of law upon which this case is decided, when looked upon separately, appear to be logically sound and correct, but when combined, present a rather novel effect. There is no longer any doubt that a third party can sue on a contract intended for his benefit. *Lawrence* v. *Fox,* 20 N. Y. 268. Courts while requiring that the third party must be ascertained and certain have held that an indefinite member of a definite class is sufficient. *Burton* v. *Larkin,* 36 Kans. 246. They have also held that the contract must be intended for the benefit of the third party (*Simpson* v. *Brown,* 68 N. Y. 355; *Pennsylvania Steel Co.* v. *N. Y. City Ry. Co.,* 198 Fed. 271) and that there must be some privity or consideration between the third party and the promisee (*Street* v. *Goodale,* 77 Mo. App. 318; *Frerking* v. *Thomas,* 64 Neb. 193; *Vulcan Iron Works* v. *Pittsburg Eastern Co.,* 129 N. Y. Supp. 676). This requirement is satisfied by any equitable right or duty as well as legal. *Montgomery* v. *Spencer,* 15 Utah 495; *Merchants Union Trust Co.* v. *New Philadelphia Granite Co.,* (Del. 1912), 83 Atl. 520. From these principles it would seem that if this were the only contract plaintiff should